



General Assembly

Substitute Bill No. 365

February Session, 2004

* SB00365ENV__033104__ *

**AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE
PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE
CONCERNING THE WATER PLANNING COUNCIL, THE
CONNECTICUT WATER DIVERSION POLICY ACT AND WATER
DIVERSIONS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 22a-365 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2004*):

3 Sections 22a-365 to [22a-378] 22a-380, inclusive, shall be known and
4 may be cited as the "Connecticut Water Diversion Policy Act".

5 Sec. 2. Section 22a-368a of the general statutes is repealed and the
6 following is substituted in lieu thereof (*Effective October 1, 2004*):

7 (a) The Commissioner of Environmental Protection shall publish a
8 dated notice of (1) the availability of a form for the reporting of
9 operating data for diversions pursuant to this section, and (2) a
10 deadline for submission of such form. Such form shall be developed by
11 the Commissioner of Environmental Protection, in consultation with
12 the Commissioners of Public Health and Agriculture and Consumer
13 Protection and the chairperson of the Public Utilities Control
14 Authority.

15 (b) Any person or municipality maintaining a diversion that was

16 registered in accordance with the provisions of section 22a-368 and
17 which continues to be in use as of July 1, 2001, shall report to the
18 Commissioner of Environmental Protection current operating data for
19 such diversion not later than six months after the publication of notice
20 pursuant to subsection (a) of this section and annually thereafter. Such
21 data shall be provided on a form developed by the Commissioner of
22 Environmental Protection, in consultation with the Commissioners of
23 Public Health, Public Utility Control and Agriculture and Consumer
24 Protection and shall be in a format determined by the Commissioner of
25 Environmental Protection. Such data shall include monthly data for
26 the calendar years 1997 to 2001, inclusive, and each subsequent
27 calendar year, (1) for the actual frequency and actual rate of water
28 withdrawals or discharges of such diversion if such diversion is
29 metered, or (2) that estimates the withdrawals or discharges in the
30 absence of a meter. A person or municipality maintaining a diversion
31 exclusively for agricultural purposes may report estimated water use
32 for the reporting period. The provisions of this subsection shall not
33 apply to an owner or operator of an existing electric generating facility
34 utilizing fossil fuel, provided the diversion is used to comply with
35 state and federal environmental laws, and further provided such
36 owner or operator reports to the Commissioner of Environmental
37 Protection an estimate of future water use necessary to comply with
38 state and federal environmental laws. The Department of
39 Environmental Protection may require additional information it deems
40 necessary for planning and allocation purposes to be reported
41 pursuant to this subsection, including, but not limited to, water
42 withdrawal quantities by time of year and the purpose for such
43 withdrawals.

44 (c) Any person or municipality maintaining a diversion that was
45 eligible for registration in accordance with section 22a-368 but failed to
46 so register, which diversion continues to be in use as of July 1, 2001,
47 shall report to the commissioner the operating data for such diversion
48 not later than six months after the publication of notice pursuant to
49 subsection (a) of this section. Such data shall be provided on a form

50 developed by the Commissioner of Environmental Protection, in
51 consultation with the Commissioners of Public Health, Public Utility
52 Control and Agriculture and Consumer Protection. Such data shall
53 include (1) the location, capacity, frequency and rate of withdrawals or
54 discharges of such diversion as of July 1, 1982, (2) a description of the
55 water use and water system on or before July 1, 1982, including
56 information to evidence its operation at that time, and (3) the monthly
57 data for the calendar years 1997 to 2001, inclusive, (A) for the actual
58 frequency and actual rate of water withdrawals or discharges of such
59 diversion if such diversion is metered, or (B) that estimates the
60 withdrawals or discharges in the absence of a meter. A person or
61 municipality maintaining a diversion exclusively for agricultural
62 purposes may report estimated water use for the reporting period in
63 subdivision (3) of this subsection.

64 (d) Any person or municipality maintaining a diversion that was
65 not eligible for registration in accordance with section 22a-368 and is
66 not currently authorized by permit issued by the commissioner
67 pursuant to said section, which diversion is in use as of July 1, 2001,
68 shall report to the Commissioner of Environmental Protection
69 operating data for the diversion not later than six months after the
70 publication of notice pursuant to subsection (a) of this section. Such
71 data shall be provided on a form developed by the Commissioner of
72 Environmental Protection, in consultation with the Commissioners of
73 Public Health, Public Utility Control and Agriculture and Consumer
74 Protection. Such data shall include (1) information as to when the
75 diversion was initiated, (2) a description of the water use and water
76 system operation, and (3) the monthly data for the calendar years 1997
77 to 2001, inclusive, (A) for the location, capacity, actual frequency and
78 actual rate of water withdrawals or discharges of said diversion if such
79 diversion is metered, or (B) that estimates the withdrawals or
80 discharges in the absence of a meter. A person or municipality
81 maintaining a diversion used exclusively for agricultural purposes
82 may report estimated water use for the reporting period in subdivision
83 (3) of this subsection.

84 (e) Information reported by a person or municipality for the
85 purposes of subsection (c) or (d) of this section shall not be used by the
86 Commissioner of Environmental Protection to order the payment of
87 civil penalties pursuant to section 22a-6b and subsection (b) of section
88 22a-376 provided the person or municipality has filed a permit
89 application pursuant to section 22a-368 on or before July 1, 2003. This
90 subsection shall not apply to any information the commissioner can
91 document independent of a submission pursuant to this section.
92 Failure to report the information required in this section may result in
93 civil penalties in accordance with section 22a-6b and subsection (b) of
94 section 22a-376.

95 (f) The Commissioner of Environmental Protection shall compile a
96 list of all water diversions in the state and develop key performance
97 measures for water diversion programs subject to the provisions of
98 sections 22a-365 to 22a-380, inclusive, and report on the status of such
99 diversions and the department's progress in meeting such performance
100 measures to the joint standing committees of the General Assembly
101 having cognizance of matters relating to public health, the
102 environment and public utilities and to the Water Planning Council in
103 accordance with section 11-4a, not later than January 1, 2005, and
104 annually thereafter.

105 Sec. 3. Section 22a-368 of the general statutes is repealed and the
106 following is substituted in lieu thereof (*Effective October 1, 2004*):

107 (a) Any person or municipality maintaining a diversion prior to or
108 on July 1, 1982, shall register on or before July 1, 1983, with the
109 commissioner on a form prescribed by him the location, capacity,
110 frequency and rate of withdrawals or discharges of said diversion and
111 a description of the water use and water system. Any such diversion
112 which is not so registered may be subject to the permit requirements of
113 sections 22a-365 to [22a-378] 22a-380, inclusive.

114 (b) Notwithstanding any other provision of the general statutes or
115 any special act to the contrary, no person or municipality shall, after

116 July 1, 1982, commence to divert water from the waters of the state
117 without first obtaining a permit for such diversion from the
118 commissioner.

119 (c) No permit shall be transferred to another person or municipality
120 without the written approval of the commissioner.

121 (d) Any person or municipality maintaining a diversion registered
122 in accordance with the provisions of this section shall pay to the
123 commissioner an annual fee for each diversion so registered. Not later
124 than January 1, 2006, the commissioner shall adopt regulations, in
125 accordance with the provisions of chapter 54, regarding a fee schedule
126 for various classes of diversions that have been registered in
127 accordance with the provisions of this section. A registration shall be
128 renewed upon receipt of payment by the commissioner. Such annual
129 fee shall be due and payable on January thirty-first of each year.
130 Failure to pay such fee when due shall result in immediate forfeiture of
131 the registered status of the diversion, requiring a permit issued by the
132 commissioner for continued operation of the diversion. A person or
133 municipality maintaining a diversion from a water source located
134 entirely upon agricultural land, as defined in subsection (b) of section
135 22-3, as amended, shall be exempt from the payment of an annual fee
136 pursuant to this subsection.

137 (e) There is established a water diversion account which shall be a
138 separate, nonlapsing account within the General Fund. Any moneys
139 collected under this subsection shall be deposited by the
140 Commissioner of Environmental Protection into the account. This
141 account may also receive moneys from public and private sources or
142 from the federal government. All moneys deposited in the account
143 shall be used by the Water Planning Council for water planning and
144 program purposes in accordance with the purposes of the Connecticut
145 Water Diversion Policy Act, sections 22a-365 to 22a-380, inclusive.

146 Sec. 4. Section 22a-377 of the general statutes, as amended by section
147 1 of public act 03-141, is repealed and the following is substituted in

148 lieu thereof (*Effective October 1, 2004*):

149 (a) The following diversions are exempt from the provisions of
150 sections 22a-365 to [22a-378a] 22a-380, inclusive: (1) One or more wells
151 joined in one system whose combined maximum withdrawal will not
152 exceed fifty thousand gallons of water during any twenty-four-hour
153 period; (2) the maximum withdrawal of fifty thousand gallons of
154 surface water during any twenty-four-hour period; (3) discharges
155 permitted under the provisions of section 22a-430, as amended; (4) a
156 storm drainage system which collects the surface water runoff of an
157 area of less than one hundred acres; (5) water for fire emergency
158 purposes; (6) diversions within, extensions and relocation of water
159 supply system distribution mains; (7) roadway crossings or culverts
160 which allow for continuous flow or passage of an existing watercourse;
161 (8) diversions directly related to routine maintenance and emergency
162 repairs of dams; and (9) diversions by a water company, as defined in
163 section 25-32a, that are necessary to protect the security of public water
164 supplies, including: (A) A diversion from a back-up well where a
165 primary well is out of service, provided (i) the back-up well is located
166 within two hundred fifty feet of such primary well, (ii) the total
167 quantity of water withdrawn does not result in an increase in the rate
168 or quantity of a diversion registered or permitted by the commissioner
169 pursuant to section 22a-368 or 22a-378a, as amended, and (iii) not later
170 than January thirtieth of each year, the commissioner is supplied a
171 written annual report, for the prior year, that identifies the location of
172 each back-up well, the construction type of each back-up well, the date
173 of installation and the daily water use from each primary well and
174 each back-up well for those days on which the back-up well operated;
175 or (B) a transfer of water from one distribution system to another
176 during a water supply emergency declared pursuant to section 22a-378
177 or 25-32b or otherwise declared according to law, provided the transfer
178 (i) is limited to the period during which the emergency exists, (ii) does
179 not result in an increase in the rate or quantity of a diversion registered
180 or permitted by the commissioner pursuant to section 22a-368 or 22a-
181 378a, as amended, (iii) is accomplished through existing, authorized,

182 installed capacity to transfer or through temporary equipment that is
183 removed within thirty days after the last day of the water supply
184 emergency, and (iv) the commissioner is notified, in writing, of any
185 such transfer and its location within three days of the transfer and the
186 commissioner is provided a written report of the daily transfer of
187 water that occurred during the emergency and any other related
188 information the commissioner may request.

189 (b) The commissioner may, by regulations adopted in accordance
190 with the provisions of chapter 54, define and establish additional
191 exempt categories or classes of diversions which would not by
192 themselves or in combination with each other have a substantial effect
193 on the long-range planning for and allocation of the water resources of
194 the state.

195 (c) The commissioner shall adopt regulations, not later than January
196 1, 2006, in accordance with the provisions of chapter 54 establishing
197 procedures for retiring unused or abandoned water diversions and
198 establishing the database, criteria and policies to be used by the
199 commissioner to insure the proper planning, management, allocation
200 and use of the water resources of the state and to fulfill the provisions
201 of sections 22a-365 to [22a-378] 22a-380, inclusive.

202 Sec. 5. Section 26-141b of the general statutes is repealed and the
203 following is substituted in lieu thereof (*Effective October 1, 2004*):

204 (a) The Commissioner of Environmental Protection shall, on or
205 before [July 1, 1973] January 1, 2006, and after consultation and
206 cooperation with the Department of Public Health, the Department of
207 Public Utility Control and any other agency, board or commission of
208 the state with which said commissioner shall deem it advisable to
209 consult and after recognizing and providing for the needs and
210 requirements of public health, flood control, industry, public utilities
211 and water supply, and further recognizing and providing for stream
212 and river ecology, the requirements of aquatic life, natural wildlife and
213 public recreation, and after considering the natural flow of water into

214 an impoundment or diversion, and being reasonably consistent
215 therewith, and also after thirty days' notice in the Connecticut Law
216 Journal and after thirty days' notice sent by certified mail to all
217 persons, firms and corporations known to have a direct interest, hold a
218 public hearing and, not earlier than thirty days thereafter, shall
219 [promulgate] adopt new regulations establishing instantaneous
220 minimum flow standards and regulations for all [stocked] river and
221 stream systems. Such instantaneous minimum flow standards and
222 regulations shall: (1) Apply to all river and stream systems within this
223 state which the commissioner finds are reasonably necessary to keep a
224 sufficient flow of water to [protect and safely maintain the fish placed
225 therein by him pursuant to his stocking program] provide for the
226 requirements of this section; (2) preserve and protect the natural
227 aquatic life, including anadromous fish, contained within such waters;
228 (3) preserve and protect the natural and stocked wildlife dependent
229 upon the flow of such water; (4) promote and protect the usage of such
230 water for public recreation; (5) be consistent with the needs and
231 requirements of public health, flood control, industry, public utilities,
232 water supply, public safety, agriculture and other lawful uses of such
233 waters.

234 (b) Not later than July 1, 2005, and annually thereafter, the
235 commissioner shall require operators subject to minimum stream flow
236 release regulations adopted pursuant to section 26-141b to submit
237 operating data to prove such operator's compliance with such
238 regulations.

239 Sec. 6. (NEW) (*Effective October 1, 2004*) Until regulations are
240 adopted pursuant to section 26-141b of the general statutes, as
241 amended by this act, existing stocked stream flow regulations adopted
242 pursuant to section 26-141a of the general statutes, as amended by this
243 act, shall not be used to determine whether the flow of a stocked
244 stream is impaired pursuant to an action for declaratory and equitable
245 relief under section 22a-16 of the general statutes.

246 Sec. 7. Section 22a-352 of the general statutes is repealed and the

247 following is substituted in lieu thereof (*Effective October 1, 2004*):

248 (a) The [Department of Environmental Protection, the Department
249 of Public Health and the Office of Policy and Management,] Water
250 Planning Council established pursuant to section 25-33o, as amended
251 by this act, shall establish a continuing planning process and shall
252 [prepare] develop, approve and periodically update [jointly] a state-
253 wide long-range plan for the management of the water resources of the
254 state. In [carrying out such preparation the aforesaid agencies]
255 developing the plan, the council shall: (1) Design a unified planning
256 program and budget, [;] (2) coordinate regional water and sewer
257 facilities plans and provide technical or financial assistance to regional
258 planning agencies in the preparation of regional water and sewer
259 facilities plans which are necessary as guidelines for the planning and
260 designing of local and interlocal facilities and which are required by
261 the federal government as a prerequisite for grants to municipalities
262 for the construction of certain water and sewer facilities, (3) seek
263 involvement by interested parties, as deemed appropriate by the
264 council, and (4) integrate individual water utility coordinating
265 committee plans, the State Plan of Conservation and Development
266 adopted under section 16a-30 and any other planning documents the
267 council deems necessary.

268 (b) The state-wide water resources plan shall: (1) Identify the
269 quantities and qualities of water that could be available to specific
270 areas under feasible distribution, [;] (2) identify present and projected
271 demands for water for specific areas, [;] (3) recommend the utilization
272 of the state's water resources, including surface and subsurface water,
273 for their greatest benefits, [;] (4) make recommendations for such major
274 engineering works or special districts which may be necessary,
275 including the need, timing and general cost thereof, [;] (5) recommend
276 land use and other measures where appropriate to insure the desired
277 quality and abundance of water, [;] (6) take into account desired
278 recreational, agricultural, industrial and commercial use of water
279 bodies, [; and] (7) seek to incorporate regional and local plans and
280 programs for water use and management and plans for water and

281 sewerage facilities in the state-wide plan, and (8) include short and
 282 long range objectives and strategies to achieve the requirements of this
 283 subsection and subsection (a) of this section.

284 [(c) Upon completion of each planning document and when
 285 adopted by the Commissioner of Environmental Protection, the
 286 Commissioner of Public Health and the Secretary of the Office of
 287 Policy and Management, said final plan shall be submitted to the
 288 General Assembly.]

289 (c) The plan required by this section shall be developed by the
 290 council not later than July 1, 2005, and updated every five years
 291 thereafter. Unanimous approval shall be required by the council for
 292 adoption of each plan.

293 (d) The council shall report a summary of any plan required by this
 294 section and a summary of the implementation of such plan to the joint
 295 standing committees of the General Assembly having cognizance of
 296 matters relating to public health, the environment and public utilities,
 297 in accordance with section 11-4a, not later than July 1, 2005, and
 298 annually thereafter.

299 Sec. 8. Section 26-141a of the general statutes is repealed and the
 300 following is substituted in lieu thereof (*Effective October 1, 2004*):

301 Whenever any dam or other structure is maintained in this state
 302 which impounds, or diverts [,] the waters of a river or stream [which is
 303 stocked with fish by the Commissioner of Environmental Protection,]
 304 or [which] whenever such dam or other structure affects the flow of
 305 water in such [a stocked] river or stream, the commissioner may
 306 [promulgate] adopt regulations, in accordance with the provisions of
 307 chapter 54, setting forth standards concerning the flow of such water in
 308 accordance with section 26-141b, as amended by this act.

This act shall take effect as follows:	
Section 1	October 1, 2004

Sec. 2	<i>October 1, 2004</i>
Sec. 3	<i>October 1, 2004</i>
Sec. 4	<i>October 1, 2004</i>
Sec. 5	<i>October 1, 2004</i>
Sec. 6	<i>October 1, 2004</i>
Sec. 7	<i>October 1, 2004</i>
Sec. 8	<i>October 1, 2004</i>

PRI *Joint Favorable Subst.*

ENV *Joint Favorable*